

# CITY of BREA

Finance Committee Communication  
 December 9, 2025  
 Item No. 3I.

**Economic Development Agreement between the City of Brea and Dwight Manley, as Trustee of the DVQ Revocable Trust, for Costco Wholesale Corporation**

TO	PREPARED BY
Finance Committee Members	Melissa Furio, Community Development Manager
DEPARTMENT HEAD APPROVAL	CITY MANAGER APPROVAL
Jason Killebrew, Assistant City Manager/Community Development Director	Kristin Griffith, City Manager

**RECOMMENDATION**

Staff recommends that the Finance Committee recommend the City Council take the following action:

1. Approve an Economic Development Agreement between the City of Brea and Dwight Manley, as Trustee of the DVQ Revocable Trust, for Costco Wholesale Corporation

**BACKGROUND/DISCUSSION**

Per Title 17 (Economic Development) of the Brea City Code (BCC), section 17.1.30, the City of Brea may grant economic incentives, including agreements to forego, waive, or reimburse sale tax and use taxes, for private development projects that provide a significant and specific public benefit, to qualifying businesses or special programs that meet certain criteria.

On November 6, 2025, the Community Development Department received an application requesting the City to consider the sharing of sales tax to assist with attracting a Costco Wholesale Corporation (Costco) to locate to the City of Brea. The application contains the information as required by Government Code §53083 and BCC §17.1.40, as further outlined in Attachment A of this report.

The Economic Development Agreement, which contains the provisions of the sales tax sharing for a term of 50 years, is provided as Attachment B. Staff recommends that the Finance Committee recommend the City Council approve an Economic Development Agreement between the City of Brea and Dwight Manley, as Trustee of the DVQ Revocable Trust for Costco.

**FISCAL IMPACT/SUMMARY**

By approving the Economic Development Agreement, Costco is anticipated to generate local sales tax to the City of Brea's General Fund, along with the creation of new jobs and retail amenities, that will produce significant public benefit. The ratio of sales tax sharing would be calculated on a sliding percentage scale, based on total annual taxable sales by Costco. Spanning the 50 term of the agreement, it is estimated that the City of Brea will receive approximately \$50,156,250 in local sales tax revenue, with approximately \$83,593,750 of local sales tax being reimbursed to the applicant.

**Attachments**

[Attachment A - Memorandum with Application Exhibits](#)

[Attachment B - Draft Economic Development Agreement](#)



# Memorandum

## Community Development Department

**To:** Finance Committee Members

**CC:** Jason Killebrew, Assistant City Manager/Community Development Director

**From:** Melissa Furio, Community Development Manager

**Date:** December 9, 2025

**Re:** Application Materials for an Economic Development Agreement between the City of Brea and Dwight Manley, as Trustee of the DVQ Revocable Trust, for Costco Wholesale Corporation

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**The purpose of this memorandum is to provide the application materials submitted by the project applicant to the Community Development Department. The memorandum and application include the required information per Government Code §53083 and Brea City Code (BCC) §17.1.40, pertaining to the request for an Economic Development Agreement.**

Per Title 17 (“Economic Development”), BCC §17.1.30, the City of Brea may grant economic incentives, including agreements to forego, waive, or reimburse sale tax and use taxes, for private development projects that provide a significant and specific public benefit, to qualifying businesses or special programs that meet certain criteria.

On November 6, 2025, the Community Development Department received an application for an Economic Development Agreement requesting the sharing of sales tax to assist with attracting a Costco Wholesale Corporation (Costco) to locate to the City of Brea. The contents of the application are attached as Exhibits A-C to this memorandum, which include responses to the required information per Government Code §53083 and BCC §17.1.40.

Among the required provisions is to provide (1) a description of the Economic Development Agreement, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the agreement, as well as (2) the projected tax revenue to the City of Brea as a result of the Economic Development Agreement. It is estimated that the project will generate significant public benefit by generating local sales tax to the City of Brea over a fifty-year (50) term of approximately \$50,156,250.00, with \$83,593,750.00 of local sales tax being reimbursed to the applicant during that timeframe.

### Attachments:

- Exhibit A – Project Application
- Exhibit B – Letter of Request
- Exhibit C – Property Owner Authorization



BUILDING & SAFETY  
ECONOMIC DEVELOPMENT  
HOUSING  
**PLANNING**

Brea Civic & Cultural Center | 1 Civic Center Circle | Brea, California 92821 | [www.cityofbrea.net](http://www.cityofbrea.net)

## SUBMITTAL INSTRUCTIONS FOR PROJECT APPLICATIONS

Project applications shall be submitted directly to the Planning Division through electronic email. Since August 15, 2022, the Planning Division no longer accepts in-person submittal. Please see instructions below for the electronic project application submission.

### **SUBMITTAL INSTRUCTIONS:**

**By email:** Project applications shall be submitted to [planner@cityofbrea.gov](mailto:planner@cityofbrea.gov). To confirm your application has been received, contact a Planner at 714-990-7674.

**NOTE:** No application will be considered submitted for Plan Review until the following is satisfied:

1. The required application deposit has been paid, as outlined in the Development Processing Fees. Credit card (Visa or Mastercard) is accepted over the phone at 714-990-7674. Checks can be dropped off at the 3<sup>rd</sup> floor front counter of 1 Civic Center Circle, Brea, CA, 92821 or mailed. If a check is mailed, please address to ATTN: Planning Division.
2. Completed Application, pages 2-6.
3. Accompanying plans and documents outlined on pages 7-9.

**\*\*It is HIGHLY RECOMMENDED to speak with a Planner prior to formal submittal. To speak with a Planner regarding your project, please contact the Planning Division at [planner@cityofbrea.gov](mailto:planner@cityofbrea.gov) or 714-990-7674.**

### **Application Completeness:**

Once the uniform application has been submitted, no later than thirty (30) days as determined in the application processing schedule, the Director shall determine, in writing, if such application is complete, and immediately transmit such determination to the applicant. If an application is determined not to be complete, the Director determination shall specify the deficiencies and the manner in which the application can be made complete. Upon determination that an application is complete and meets the requirements for acceptance, or expiration of the thirty (30) day period if no determination regarding completeness is made, the application shall be deemed accepted.

### **IMPORTANT UPDATE:**

Since August 1, 2022, all planning development applications are accepted and reviewed based on the established application processing schedule, which includes a weekly submittal deadline. View the latest processing schedule on this page: [www.cityofbrea.gov/177/Planning](http://www.cityofbrea.gov/177/Planning)

**SHOULD YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
THE PLANNING DIVISION AT 714-990-7674 OR  
[PLANNER@CITYOFBREA.GOV](mailto:PLANNER@CITYOFBREA.GOV)**



# PROJECT APPLICATION

**GENERAL INFORMATION REQUIRED: (Print or Type)**

Name of Proposed Project: Sales Tax Sharing Agreement for Warehouse Retail Store (Costco)

Location of Project (Address Required): 200-250 S. Kraemer Boulevard  
 Legal Description of Project Location (Assessor's Parcel No.): 320-221-24; 320-221-25

**APPLICANT INFORMATION:**

Applicant Name: DVQ Revocable Trust or Designee Phone: project contact below

Email: project contact below

Address: 565 W. Lambert Road, Suite F

City: Brea State: CA Zip Code: 92821

**PROJECT CONTACT PERSON: (If Different)**

Contact Person: Alan Fenstermacher Phone: 714 641 3452

Email: afenstermacher@rutan.com

**PROJECT INFORMATION: (Print or Type)**

Zoning Designation: M-1 (Light Industrial) General Plan Designation: Light Industrial

Existing Use: Office Proposed Use: Warehouse retail store

Type of Development:

Residential  Commercial  Industrial  Mixed-Use

Lot Size (square feet): 808909.2 Lot Width: Lot Depth:  
 Existing Floor Area (sq. ft.): Existing FAR: Existing Lot Coverage:  
 Proposed Floor Area (sq. ft.): Proposed FAR: Proposed Lot Coverage:

<b>STAFF USE ONLY</b>		
Accela Record Number:		
Project Manager:		
Entitlement File Number(s):		Related Files:
<b>SUBMITTAL INFO:</b>		
Date & Time Received:	Received by:	Deposit Received:

**PROJECT INFORMATION: (Continued)**

Proposed No. of Stories:

Proposed Building Height:

Existing Parking Stalls:

Proposed Parking Stalls:

**Project Description:** The project description should include a detailed description of demolition, on-site improvements, proposed use & operations, ect. In addition, please describe all building material and color as well as description of signage and their location. Please provide a separate PDF attachment labeled "Project Description" if more space is needed.

**Check if project description is attached.**

This application is being submitted to request that the City enter into a sales tax sharing agreement ("Agreement") relating to a proposed Costco retail warehouse store, which would be located on an approximately 18.57 acre portion of the overall Property. The Property requires approval of land use entitlements, including a subdivision or lot line adjustment, prior to development of the proposed Costco, which the applicant anticipates would be processed concurrently this application for the Agreement, along with any other required approvals. The precise physical details of the Costco are still being developed, but the applicant has obtained projected sales and sales tax from the project, as described in the Letter of Request attached to this application. This application is being submitted pursuant to newly enacted Title 17 of the Brea Municipal Code.

**TYPE OF REVIEW REQUESTED: (Select all that apply)**

Planning Commission / City Council

- Certificate of Compatibility
- Conditional Use Permit
- Development Agreement
- General Plan Amendment
- Historic Designation
- Planned Community
- Precise Development Plan
- Temporary Trailer
- Tentative Parcel Map
- Tentative Tract Map
- Zone Change
- Zone Variance
- Other Sales Tax Sharing Agreement

Administrative/Community Development Director

- Administrative Remedy
- Minor Conditional Use Permit
- Plan Review
- Public Convenience or Necessity
- Tree Removal (see pg. 9)
- Other \_\_\_\_\_

**PROPERTY OWNER INFORMATION & AUTHORIZATION**

(as listed in the Orange County Assessor's records)

Legal Owner Name: Kramer Acquisition Partners Owner LLC

Company Name: Kramer Acquisition Partners Owner LLC

Email: see attached letter of authorization

Phone: see attached letter of authorization

Address: see attached letter of authorization

City: see attached letter of authorization

State:

Zip Code:

I hereby certify under penalty of perjury under the laws of the State of California that I am the owner(s) of the subject property, or have been authorized to sign on behalf of the property owner, and consent to the filing of this application on the above referenced property. **If the owner did not sign below, a letter of authorization is required.**

By: [Signature] Date: 11/6/25  
(Signature)

By: Dwight Manley evp  
(Printed Name)

**DESIGN PROFESSIONAL OR OWNER OF THE COPYRIGHT IF DIFFERENT (OPTIONAL)**

Name(s): N/A

Email:

Phone:

Address:

City:

State:

Zip Code:

**AUTHORIZATION TO REPRODUCE PROJECT PLANS- Gov. Code § 65103.5(f)(2)**

I hereby grant permission for the City of Brea to provide the project plans for inspection as a part of the public record, to copy for members of the public, and post the plans online. This permission shall be constituted as the permission for architectural drawings that contain a copyright annotation and are protected by the federal Copyright Act of 1976 (Government Code Section 65103.5(f)(2)).

By: [Signature] Date: 11/6/25  
(Signature)

By: Dwight Manley evp  
(Printed Name)

**TRUST ACCOUNT OWNER INFORMATION**

All project applications require the specified minimum deposit to a Trust Account. Additional funds and/or subsequent deposits may be required depending on the specified project and level of staff time necessary. All unused funds will be reimbursed following the completion of project and/or review. Staff time devoted to your project will be billed according to our **Development Processing Fees**. The necessary staff time will vary according to the complexity of the project and may include, initial review and ongoing project processing by City staff and consultant time, if necessary.

**TRUST ACCOUNT OWNER:**

Name of the Organization unless there is an Individual Financially Responsible for the Project:

Address: 565 W. Lambert Road, Suite F State: CA  
City: Brea Zip Code: 92821  
Email: dmanleyinc@aol.com Phone: (657) 286-5135

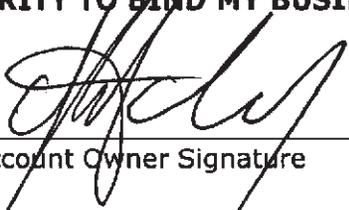
\*\*\* Please note: Name and address will be used to generate invoices and refund checks \*\*\*

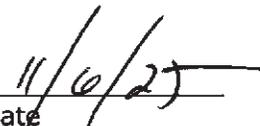
**STATEMENT OF UNDERSTANDING AND AGREEMENT**

I understand that my initial deposit is a retainer and not a fee. This deposit will be used to set up an account, against which fees shall be charged based on the hourly rate listed in the City fee schedule in effect at the time the work is performed. I understand that should the costs exceed the deposit, I will be billed monthly for any additional deposit amount intended to cover future charges. If I fail to pay the fees when due, I understand that the City will stop working on the application. If the final costs are less, the unused portion of the deposit will be issued to the contact information in the above section and returned to the organization and/or individual above after the conclusion of the process or final inspection of the completed project, whichever occurs later.

As the trust account owner, I assume full financial responsibility for all costs incurred by the City in processing this application(s).

**BY SIGNING BELOW, I HEREBY CONSENT THAT I UNDERSTAND THE MATTERS AS DESCRIBED ABOVE AND AGREE TO THE TERMS. I HEREBY FURTHER REPRESENT THAT I HAVE THE AUTHORITY TO BIND MY BUSINESS BY SIGNING ON ITS BEHALF.**

  
Trust Account Owner Signature  
  
Dwight Manley  
Trust Account Owner Printed Name

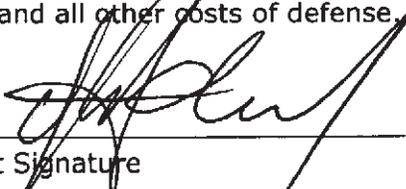
  
Date

**INDEMNIFICATION AGREEMENT**

PLEASE READ, FILL IN, AND SIGN AT THE BOTTOM

I, the undersigned, certify that I am the applicant in the foregoing application, that I have read the foregoing application and know the content thereof, and state that the same is true and correct to the best of my knowledge and belief, and further certify that I shall comply with each and every condition of approval as stated herein.

Furthermore, Dwight Manley, on behalf of DVQ Revocable Trust hereby agrees to defend, indemnify, and hold free and harmless the City of Brea, its elected officials, officers, employees, and agents, with respect to any and all liabilities, claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including the payment of actual attorney's fees, court costs, and any and all other costs of defense.

  
Applicant Signature

11/6/25  
Date

**Staff Use Only**

ACCELA RECORD NUMBER: TRUST ACCOUNT NUMBER:

## **SUBMITTAL CHECKLIST**

If you obtained this application through our website, please contact a Planner at 714-990-7674 to confirm applicability of the submittal items. The items listed below are considered *minimum*. Additional information may be necessary for clarification during the review process.

### **APPLIES TO ALL APPLICATIONS**

- 1. COMPLETED PROJECT APPLICATION** - Property owner information & authorization must be included
- 2. PHOTOGRAPHS** - Photographs should include the project site's existing exterior and interior.
- 3. LETTER OF REQUEST** - Describe the project/proposal and reason for the request. For businesses, include operations, number of employees, hours of operation, property tenant list, alcohol requests and any other pertinent information. For residential projects, include number of units, phasing/ timing plan and any other pertinent information. *For tree removal permits, a statement indicating the reason for the removal or relocation of tree(s).*
- 4. PLANS TITLE PAGE**
  - Date (Resubmitted plans shall reflect new date of submittal)
  - Project Address
  - Legal Description
  - Scope of work
  - List of Required Entitlements
  - Owner Information Architect/Designer Information
  - Zoning Conformance Development Standards (existing/allowed/proposed)
- 5. SITE PLAN**
  - Show entire Parcel with property lines and dimensions
  - Development Summary Table - noting information such as proposed square footage, floor area
  - Provide separate existing and proposed site plans Provide plan drawn to scale with dimensions
  - Show all setbacks (front, rear and side)
  - Truck turning radius (industrial and commercial) Show location of:
    - Carpool/van spaces
    - Bicycle parking area
    - Rideshare vehicle loading area
  - Distance between buildings
  - Location of utility poles and fire hydrants
  - Indicate locations of trash enclosures and SCE transformer
  - Location of proposed monument signs
  - Proposed outdoor storage area, if any, and required screening Label proposed uses for all building sites on site
  - Location of bus stop improvements, if applicable to project
  - Show locations of street and sidewalks, with all improvements (trees, light poles, curbs, etc.)
  - Show all existing and proposed driveways and driveways immediately adjacent to the site
  - Show all curb, gutter and driveway within the full right-of-way adjacent to the project site
  - Photometric plan
  - Circulation plan

**6. FLOOR PLAN**

- Provide separate existing and proposed floor plans
- Provide plans drawn to scale with dimensions
- Label room and/or areas
- Provide a window and door schedule (when part of scope)

**7. DEPOSIT** - The application will **NOT** be considered submitted until payment is received. Please visit our [Development Processing Fees](#) to verify the deposit amount.

**8. ELECTRONIC PLAN COPIES** - PDF format digital copies of all submitted plans, photographs and photographs of the colors and materials board in minimum 300 D.P.I. (dots per square inch) format for presentation purposes. A clean site plan and colored landscape plan with no construction information or dimensions is required for presentation purposes. Include one 750KB or less jpeg image of the proposed rendering to be displayed on the City's development map. If you are submitting in person, all submitted material shall be saved in a USB Drive or CD.

**APPLIES TO NEW CONSTRUCTION, BUILDING ADDITIONS, AND BUILDING REMODELS:**

**9. PRELIMINARY TITLE REPORT** - Must be dated within six (6) months.

 **10. ELEVATIONS**

- Show all sides of proposed
- Elevations Provide plans drawn to scale with dimensions
- Provide the height of all structures
- Label proposed colors, materials (with level of quality and longevity)
- Location and size of signs
- Provide details of architectural elements, walls, and fences, as needed Line of sight drawings

 **11. RENDERING(S) - COLOR** **12. SECTION PLAN** **13. SIGN PLANS**

- Show location of all signs and on building and site plan
- Label size of signs

 **14. ROOF PLAN**

- Provide plans drawn to scale with dimensions Show roof pitches and slope
- Show all-roof mounted equipment
- Cross-section demonstrating the roof-mounted equipment will be fully screened from view by the architectural design of the building

 **15. CONCEPTUAL LANDSCAPE PLAN**

- Proposed and existing improvements as shown on the site plan Dimensions such as setbacks and street widths shall be excluded. Identify plan materials by botanical and common names. Identify size and spacing of plants
- Identify mounted areas, turf, ground covered areas, shrub locations, accent trees, street trees, sloping planting materials. Private yard areas.
- Location of community amenities including common or public recreation areas (open play areas, barbecue area, pool, spa, recreation building)
- Location of primary and secondary entry point areas and their treatment (textured paving, security gates, accent or special planting, entry walls, monument signs)
- Location of emergency vehicle access, trail locations, public walkways, hardscape amenities (paving, benches etc.)

**16. WATER QUALITY MANAGEMENT PLAN (WQMP) CHECKLIST** **17. ENVIRONMENTAL INFORMATION FORM** **18. COLOR & MATERIAL BOARD** **19. PRELIMINARY GRADING PLANS**

- Proposed items should be designated with solid lines, existing with small dashes, and future with long dashes if a phased project.
- Cross sections at all site boundaries (maximum & minimum conditions)
- Drainage and flood control facilities-size, type, etc.
- Easements, property lines, right-of-way
- Earthwork quantities-borrow and disposal areas
- Erosion control measures
- Existing features within and 50 feet beyond the site boundaries (label to remain or to be removed)-natural ground, trees, structures, drainage courses, streets, trails, slopes, etc.
- Grading (Proposed)-structures, curbs, walls (height), gutters, pavement, walks, swales, mounding, slopes, open space, trails
- Natural areas to be preserved
- Parkway culverts where drainage is directed to streets, except for single family residences
- Retaining walls-top and footing elevations
- Separate cut and fill areas with a line. In addition, one copy of the plan shall be submitted with fill areas colored in green and cut areas in red
- Shade pavement areas and slopes 3:1 or steeper
- Location, elevation, and size of proposed buildings pads
- Streets-cross sections, improvements, right-of-way, etc.

 **20. FIRE MASTER PLAN** (applies to new commercial, multifamily residential, and subdivisions).

Contact the Fire Department for more information.

- Fire access road on property and streets
- Fire hydrant locations(s) new and existing
- Fire department connection location and control valve location

**APPLIES TO TREE REMOVAL PERMIT:** **20. TREE REMOVAL SITE PLAN**

- Property Boundary with Property Line Dimensions
- Tree(s) Locations(s)
- Lot and Easements Lines
- Scale
- Pavement Areas
- Structures
- Fences, Gates, and Walls
- Grading

 **21. ARBORIST REPORT** (A written technical report and photographs from a certified arborist regarding the size, information, health and value of the tree(s) proposed for removal.

- Tree Protection Plan

**OTHER DOCUMENTS OR STUDIES**

- 21. PARKING JUSTIFICATION** *(for shared parking agreements or parking variance)*
- 22. PARKING STUDY** *(if applicable)*
- 23. ENVIRONMENTAL STUDIES** *(if applicable)*
  - Traffic Impact Analysis/Traffic Assessment
  - Air Quality Study
  - Habitat Assessment/Jurisdiction Delineation
  - Noise Study
  - Phase 1 and/or 2 Assessment
- 24. ART IN PUBLIC PLACES**
- 25. PUBLIC NOTIFICATION PACKET** *(if applicable)*

November 6, 2025

**VIA E-MAIL**

City of Brea  
Economic Development Department  
1 Civic Center Circle  
Brea, CA 92821

Re: Sales Tax Sharing Agreement

To Whom it May Concern:

This Letter of Request is being provided as part of the undersigned's application for a Sales Tax Sharing Agreement ("Agreement") with the City of Brea ("City") relating to a proposed Costco warehouse store ("Project"), to be generally located at 200-250 S. Kraemer Boulevard (the "Site"). This Letter is submitted pursuant to City Ordinance No. 1266, which added a new Title 17 (Economic Development) to the City's Municipal Code ("BMC"). Pursuant to newly enacted BMC section 17.1.40(1)(a), retail warehouse stores larger than 125,000 square feet on at least 10 acres of the property are eligible for an economic incentive, which would include the proposed Project. Pursuant to BMC section 17.1.30(2), economic incentives include sales tax sharing agreements.

In support of its request and application for the Agreement, the applicant provides the following information:

The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy

DVQ Revocable Trust and its potential designee

The start and end dates and schedule, if applicable, for the economic development subsidy

Start and end dates TBD

A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy

The proposed agreement would result in the City sharing sales tax revenue from the proposed Costco with the owner of the Project site.

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A statement of the public purposes for the economic development subsidy

Without the sales tax sharing agreement, the development of the Project would not be possible, because it would not be economically feasible. With the sales tax sharing agreement, the Project will be possible, and will provide the residents of Brea with a conveniently located Costco warehouse retail store, as well as result in millions of dollars of sales tax and property tax revenue to the City that would not otherwise occur. The Project will also provide high quality temporary and permanent jobs, as discussed herein. Costco is known to be a high quality employer with significant long term employee retention.

Projected tax revenue to the local agency as a result of the economic development subsidy

The City will receive a significant amount of increased sales tax as a result of the Project, and again, the Project is only feasible as a result of the Agreement.

Property tax would also be significantly increased from the value of the Property significantly increasing – and reassessment at current market value – following the development of the Costco.

Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions

Approximately 350 full time and 350 part time jobs

Development cost

Approximately \$106,000,000

Projected financing

No financing

Development timeline

12-18 months following all final, unappealed approvals

5-year forecast projection of retail sales once in operation

Retail sales are generally expected to be over \$200 million in each of the first five years.

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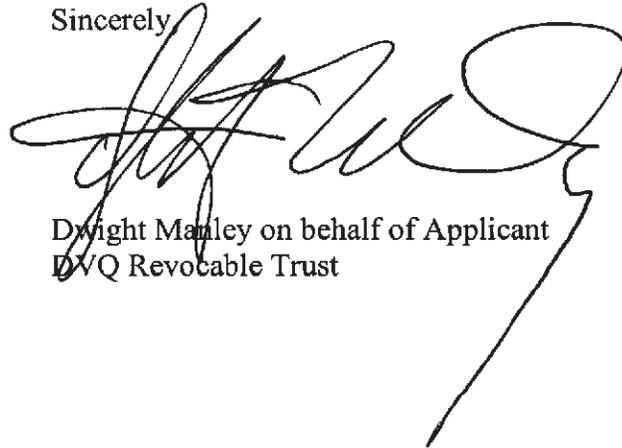
The form and amount of required assistance requested, including how it will be used

The currently proposed sales tax sharing percentages are shown on Exhibit 1. It will be used to make the development of the Project on the Property feasible, and bring a Costco to the City of Brea.

The specific public benefits that the project will provide for the City, such as any community improvements or amenities or other benefits (besides jobs and tax revenue already stated above)

In addition to job and tax revenue, the Project will provide a much desired community amenity – a conveniently located, high quality Costco warehouse retail store. Costco is known to be a great community partner, as well as to provide high quality items at maximum value for its customers.

Sincerely

A handwritten signature in black ink, appearing to read "Dwight Manley". The signature is fluid and cursive, with a large loop at the end.

Dwight Manley on behalf of Applicant  
DWQ Revocable Trust

# Exhibit 1

Year	Land Owner (% of Share of Sales Tax)	City (% of Share of Sales Tax)
1	100	0
2	100	0
3	95	5
4	95	5
5	90	10
6	90	10
7	90	10
8	85	15
9	85	15
10	85	15
11	80	20
12	80	20
13	80	20
14	75	25
15	75	25
16	75	25
17	70	30
18	70	30
19	65	35
20	65	35
21	65	35
22	60	40
23	60	40
24	60	40
25	60	40
26	55	45
27	55	45
28	55	45
29	55	45
30	50	50
31	50	50
32	50	50
33	50	50
34	50	50
35	50	50
36	50	50
37	50	50
38	50	50
39	50	50
40	50	50
41	40	60
ALL FOLLOWING YEARS	40	60

November 6, 2025

City of Brea  
1 Civic Center Circle  
Brea, CA 92821

Re: Consent to Applications Concerning 200-250 S. Kraemer Boulevard (APNs 320-221-24 & 340-221-25)

To Whom it May Concern:

I am the authorized representative of Kramer Acquisition Partners Owner LLC, the owner of the real property generally located on 200-250 S. Kraemer Boulevard in the City of Brea (“City”), designated by the Orange County Tax Assessor as Assessor Parcel Numbers (“APNs”) 320-221-24 and 340-221-25 (the “Property”).

DVQ Revocable Trust, Dwight Manley, and any of their authorized representatives, consultants and attorneys have the permission and consent of the owner of the Property to submit any entitlement or other applications to the City concerning the Property, including but not limited to an application for a sales tax sharing agreement with the City relating to a proposed warehouse retail store on a portion of the Property.

**[signature on following page]**

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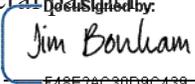
KRAEMER ACQUISITIONS PARTNERS OWNER LLC,  
a Delaware limited liability company

By: Kraemer Acquisitions Partners LLC,  
a Delaware limited liability company,  
its sold member

By: Hines Kraemer Acquisitions Partners LLC,  
a Delaware limited liability company,  
its managing member

By: Hines Kraemer Associates LP,  
a Texas limited partnership,  
its sole member

By: Hines Investment Management Holdings Limited Partnership  
a Texas limited partnership,  
its general partner

By:   
Name: Jim Bonham  
Title: Senior Managing Director

RECORDING REQUESTED BY, AND  
WHEN RECORDED MAIL TO:

CITY OF BREA  
1 CIVIC CENTER CIRCLE  
BREA, CALIFORNIA 92821  
ATTN: CITY CLERK

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEE PER GOVERNMENT CODE SECTION 6103

**ECONOMIC DEVELOPMENT AGREEMENT**  
concerning 200 & 250 S. Kraemer Boulevard, Brea California (APNs 320-  
221-24 and 320 221-25) and imposing restrictions on the conveyance  
thereof (Government Code § 27281.5)

between

**THE CITY OF BREA,**  
a California Municipal Corporation

&

**DWIGHT MANLEY,**  
as Trustee of the DVQ REVOCABLE TRUST

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement"), is dated \_\_\_\_\_, 2025 ("Effective Date") for reference purposes, and is entered into by and between the CITY OF BREA, a California municipal Corporation ("City") and DWIGHT MANLEY ("Trustee"), an individual in his capacity as Trustee of the DVQ REVOCABLE TRUST ("Owner"). City and Owner may be referred to herein each individually as a "Party" and collectively as "Parties."

## RECITALS

A. Pursuant to Brea City Code Section 17.01.30, City may grant economic incentives, including reimbursement of sales taxes and use taxes, for certain types of private development projects that provide a significant and specific public benefit.

B. Pursuant to Brea City Code Section 17.01.040, City may grant economic incentives to retail warehouse stores that are more than 125,000 square feet in size, located on at least 10 acres, projected to generate at least \$175,000,000 per year in taxable retail sales, and projected to employ at least 50 persons in full-time positions.

C. Costco Wholesale Corporation, a Washington publicly-traded corporation (“Costco”) is in the business of operating membership-only big-box warehouse retail stores, and is considering leasing real property owned by Owner and located at 200 & 250 S. Kraemer Boulevard in the City of Brea, also known by Assessor Parcel Numbers 320-221-24 and 320-221-25 and more particularly described in Exhibit A to this Agreement (the “Property”), for the purpose of establishing and operating a new Costco warehouse store that meets the eligibility requirements for an economic incentive from City.

D. The establishment and operation of a Costco warehouse store on the Property will contribute to the ongoing economic vitality of City, provide additional job opportunities, expand City’s tax base, and otherwise improve economic and physical conditions in Brea.

E. In order to induce Owner to lease the Property to Costco to establish and operate a warehouse store on the Property, City is willing to provide financial assistance to Owner in which City’s obligations for any particular fiscal year are contingent upon: (i) Costco operating a warehouse store on the Property during all of such fiscal year; (ii) Costco generating sales and use taxes from operations on the Property during all of such fiscal year; and (iii) City’s actual receipt of such sales and use taxes generated by such operations.

F. In order to secure Owner’s continued leasing of the Property to Costco, the contingent financial assistance provided by City and obligations of Owner under this Agreement shall run with the land and not be separately transferable from Owner’s interest in the Property.

## AGREEMENT

In consideration of the promises set forth in this agreement, the parties agree as follows.

### ARTICLE 1. DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

1.1 “Effective Date”: The date of this Agreement as first written above.

1.2 “Fiscal Year”: City’s fiscal year, which commences July 1 and ends on June 30 of the following calendar year.

1.3 “Operating Term”: Fifty years, commencing on the date that Costco receives a Certificate of Occupancy for its warehouse store on the Property, but in no event later than January 1, 2028. At least three years prior to the expiration of the Operating Term, if Costco has or intends to extend its lease on the Property, Owner and the City shall reasonably cooperate and use commercially best efforts to extend the Operating Term of this Agreement, or enter into a new, similar Agreement.

1.4 “Owner”: is in escrow to purchase the Property, and will be the legal owner of the Property prior to any execution of a lease with Costco, as anticipated by Paragraph 5.1 herein, and prior to the commencement of the Operating Term.

1.5 “Penalty Assessments”: penalties, assessments, collection costs, and other costs, fees or charges resulting from late or delinquent payment of Sales and Use Taxes.

1.6 “Sales and Use Taxes”: the taxes derived from Costco’s business conducted on the Property including but not limited to all sales tax generated by the sale of retail goods, motor vehicle fuel and allocated to and actually received by City pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code Section 7200 *et seq.*). Sales and Use Taxes shall not include: Penalty Assessments; taxes levied by, collected for or allocated to the State of California, the County of Orange, any district or other entity; or any funds paid, granted or allocated to City by the State of California, the County of Orange, any district or other entity, notwithstanding that such funds received by City are derived or measured by such other entity based upon taxable sales. Sales and Use Taxes also shall not include: (i) any portion of taxes received by City from any of Costco’s operations on the Property that City may be required to pay, transfer, assign, or allocate to any other entity or entities by virtue of any law, or by virtue of any contract entered into between City and any other governmental agency under Government Code Section 53084; (ii) the State Board of Equalization’s administrative and processing fee attributable to City’s portion of such taxes (calculated at the same percentage of such taxes as applies city-wide); and (iii) any sales tax “over-rides” for transportation and public safety. Sales and Use Taxes shall not be considered to have been received by City until City is able to confirm receipt of such taxes from the State Board of Equalization.

## **ARTICLE 2. TERM**

This Agreement shall begin on the Effective Date and shall expire at the end of the Operating Term unless sooner terminated as provided below.

## **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF OWNER**

Owner makes the following representations and warranties as of the Effective Date:

3.1 Status. Owner is duly organized, validly existing, and is qualified to do business and is in good standing in the State of California with full power and authority to perform the obligations contemplated by this Agreement.

3.2 Corporate Authority. Each person executing this Agreement on behalf of Owner warrants that he or she is duly authorized to execute this Agreement on Owner’s behalf of and that by his or her execution, Owner is formally bound to this Agreement. Owner shall provide

City written proof that each person executing this Agreement on Owner's behalf is duly authorized to bind Owner.

3.3 Legal Compliance. Owner has complied, or prior to the Operating Term will have complied, with all governmental requirements concerning its organization, existence, and transaction of business with respect to the Property. Owner has the right and power to own and operate its business as contemplated in this Agreement.

3.4 Enforceability. Owner has full right, power, and authority to execute and deliver this Agreement, and to perform the undertakings of Owner contained in this Agreement. This Agreement constitutes a valid and binding obligation of Owner, which is legally enforceable in accordance with its terms, subject to the application and effect of all governmental requirements including the laws of bankruptcy, creditor's rights exceptions, and equity.

3.5 Interest of Owner. Owner warrants and represents that, as of the Effective Date, it has an equitable interest in the Property, and that it has full legal right to enter into this Agreement and to lease the Property to Costco in accordance with this Agreement.

3.6 No Litigation. There is no litigation or other proceeding pending or threatened against Owner or the Property that may adversely affect the enforceability of this Agreement or the operation of Costco's business at the Property.

3.7 No Breach. None of the undertakings of Owner contained in this Agreement violates any applicable governmental requirements, or conflicts with or constitutes a breach or default under any contract by which Owner or the Property is bound.

3.8 Financial Information. All financial information prepared by Owner and delivered to City by Owner (including information relating to Owner, Costco, or the Property), fairly and accurately represents such financial condition in all material respects as of the date such financial information was prepared. No material adverse change in such financial condition has occurred as of the Effective Date from that disclosed in such financial information.

3.9 Proceedings. To the best of Owner's knowledge, Owner is not in violation of any law, or of any order of any court or governmental agency the effect of which would prohibit Owner from performing its obligations under this Agreement.

3.10 Accuracy. To the best of Owner's knowledge, all documents, reports, instruments, papers, data, information and forms of evidence delivered to City by Owner with respect to this Agreement are accurate and correct in all material respects, are materially complete insofar as completeness may be necessary to give City true and accurate knowledge of the subject matter thereof, and do not contain any material misrepresentation or omission by Owner or any other person or entity. City may rely on such reports, documents, instruments, papers, data, information, and forms of evidence without any investigation or inquiry.

3.11 Taxes. To the best of Owner's knowledge, Owner has filed all federal, state, county and municipal tax returns required to have been filed by Owner, and has paid all taxes which have become due pursuant to such returns.

3.12 Warranties Against Payment of Consideration for Agreement. Owner represents and warrants that Owner has not employed or retained any person to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee. Owner further represents and warrants that no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Owner or any of its agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 3.12 shall automatically terminate this Agreement, without further notice to or action by either Party, and Owner shall immediately refund any reimbursements made pursuant to ARTICLE 6 within 10 days of demand by City.

3.13 Default. If any material warranty, representation, or statement made or furnished by Owner to City is false or proved to have been false in any material respect when it was made, then Owner shall be in default under this Agreement.

#### **ARTICLE 4. BINDING EFFECT; ASSIGNMENT**

4.1 Obligations Running with the Land. The obligations established in this Agreement attach to and run with the Property, and shall be binding on Owner and any of Owner's successors-in-interest to the Property or any part thereof for the benefit and in favor of City and City's successors and assigns, as the case or context may require.

4.2 Assignment. Owner shall not assign its rights or obligations under this Agreement without the prior written consent of City, which consent shall be within City's sole discretion; provided, however, City will not unreasonably withhold its consent to an assignment if (i) the assignment results in merely a change in the form of ownership of Owner, including any assignment is to an entity that is affiliated with, wholly owned, or otherwise controlled by Owner, or (ii) the assignment is made in conjunction with a sale of all of the Property and the buyer agrees in writing to fulfill Owner's obligations under the Agreement.

#### **ARTICLE 5. OBLIGATIONS OF OWNER**

5.1 Costco Lease. On or before July 1, 2026, Owner shall lease the Property to Costco for purpose of establishing and operating a warehouse store thereon . Owner shall provide City with a copy of recorded memorandum of such lease agreement ("Lease") no later than 10 days of the Lease's execution.

5.2 Development for the Property. Owner shall take all commercially reasonable steps to facilitate: (i) Costco's development of a warehouse store on the Property; and (ii) Costco's continuous operation of a warehouse store on the Property for the term of the Lease or this Agreement, whichever is longer; and (iii) Costco's cooperation with City to fulfill the purposes and performance of this Agreement. In the event Costco permanently ceases to operate on the Property prior to the expiration of the Operating Term, this Agreement shall automatically terminate.

5.3 Local, State and Federal Laws. Owner shall carry out the operation of its business in conformity with applicable laws.

5.4 Anti-discrimination. Owner shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin or any other basis prohibited by law.

5.5 Sales and Use Tax Reports. Owner shall provide or cause to be provided to City true and correct copies of all reports filed with the State Board of Equalization by Costco within 10 days after filing every such report, in order to allow City to preliminarily determine the amount of Sales and Use Taxes paid by Costco on account of sales from the Property; provided, however, that City shall not be deemed to have received any Sales and Use Taxes until City's actual receipt thereof.

5.6 Other Government Reports. Owner shall provide or cause to be provided to City such information and reports that City is required by law to publish or provide to any other governmental agency, including all information described in Revenue and Taxation Code Section 7213 and paragraphs (a) and (d) of Government Code Section 53083. Owner expressly acknowledges and agrees that its failure to provide or reasonably cooperate in the production of such information in a timely manner shall be a material breach of Owner's obligations under this Agreement.

5.7 Labor Code. Owner expressly acknowledges that it is aware that Costco's development of a warehouse retail store on the Property may constitute a public works project under Labor Code Section 1771, thereby requiring payment of prevailing wages. Owner shall provide Costco written notice of the same prior to leasing the Property to Costco or 30 days after the Effective Date, whichever is sooner, and shall concurrently provide City a copy of such notice.

## ARTICLE 6. FINANCIAL ASSISTANCE

6.1 Quarterly Reimbursements. Within 15 days after City confirms its quarterly receipt of Sales and Use Taxes paid by Costco on account of sales within City during the Operating Term, City shall provide on a fiscal year quarterly basis financial assistance to Owner in an amount equal to a percentage of such Sales and Use Taxes in accordance with following schedule:

Year of the Operating Term	Percentage of Sales and Use Taxes subject to Reimbursement
1-2	100
3-4	95
5-7	90
8-10	85
11-13	80
14-16	75
17-18	70
19-21	65
22-25	60
26-29	55
30-40	50

Year of the Operating Term	Percentage of Sales and Use Taxes subject to Reimbursement
41-50	40

Upon the expiration of the Operating Term or the earlier termination of this Agreement, City shall have no further obligation under this Agreement to provide financial assistance to Owner.

6.2 Annual Adjustment. Promptly after each fiscal year of City that includes a portion of the Operating Term, City shall determine with respect to the preceding fiscal year, both the aggregate amount of Sales and Use Taxes received by City and the aggregate amount of quarterly reimbursements made to Owner pursuant to Section 6.1. If for any reason (including reporting errors or other adjustments) the aggregate amount of the quarterly payments made by City pursuant to Section 6.1 for the preceding fiscal year is less than of the actual Sales and Use Taxes generated during that same fiscal year, City shall pay to Owner an adjustment payment equal to the amount of the deficiency. If for any reason (including reporting errors or other adjustments) the aggregate amount of the quarterly payments made by City pursuant to Section 6.1 for the preceding fiscal year is more than the actual Sales and Use Taxes generated during that same fiscal year, then the amount of the excess shall be applied towards the next quarterly payment due under Section 6.1; except that if any unapplied excess remains after the Operating Term, then Owner shall pay the amount of the unapplied excess promptly to City upon demand.

6.3 Disputes. In the event of any dispute regarding the amounts payable under Section 0, the Parties shall promptly meet and confer in good faith to attempt to resolve the dispute.

## ARTICLE 7. INDEMNIFICATION

7.1 To the maximum extent permitted by law, Owner shall defend, indemnify, and hold City and its elected officials, officers, contractors serving as City officials, agents, and employees (“Indemnitees”) harmless from liability for damage and/or claims for damage for personal injuries, including death, and claims for property damage, and with respect to all other actions and liabilities for damages arising from use of the Property, including development operation of Costco’s retail warehouse store, except for such loss or damage arising from the sole negligence or willful misconduct of City. This indemnity provision applies to all damages and claims for damage regardless of whether or not City prepared, supplied, or approved the plans, specifications, or other documents for the Property, including any associated public or private improvements.

7.2 Without limiting the generality of Section 7.1, Owner shall also defend, indemnify, and hold the Indemnitees harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from or related to any claims that Costco or Costco’s contractors are required to pay prevailing wages pursuant to Labor Code Section 1720 *et seq.*, in connection with the development of Costco’s retail warehouse store on the Property.

7.3 Without limiting the generality of Section 7.1, in the event of any third party legal action challenging the validity, applicability, or interpretation of any provision of this Agreement, Owner shall also indemnify, defend, and hold harmless the Indemnitees with respect

to all liability, costs, and expenses incurred by, and/or awarded against, City or any of the Indemnitees in relation to such action.

7.4 In the event of any litigation challenging its effectiveness, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless otherwise ordered by the court. Absent issuance of an injunction, Owner may elect to lease the Property to Costco pending completion of the litigation but it shall do so at its sole risk, and City shall not be liable for any loss suffered as a result thereof.

7.5 With respect to any legal action or claim falling within Owner's defense, indemnity, and hold harmless obligations under this Article, City shall have the right to select counsel of its choice and the Parties shall cooperate in the defense. Owner shall enter into a joint defense and/or indemnity agreement, in a form approved by the City Attorney, and shall provide, and maintain for the duration of such action or claim, a cash deposit to City in an amount or amounts determined by City Attorney to be reasonably necessary to cover the City's actual, reasonable legal fees, costs, and expenses. City shall refund to Owner any unexpended funds from the deposit within 30 days of any final disposition or full and complete settlement of the action or claim.

7.6 With respect to any legal action or claim falling within Owner's defense, indemnity, and hold harmless obligations under this Article, Owner shall reimburse Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Owner's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Owner or Indemnitees.

7.7 This Article shall survive this the expiration or earlier termination of this Agreement.

## **ARTICLE 8. DEFAULT; TERMINATION**

If either Party breaches any material obligation under this Agreement and fails to cure the breach within 30 days after receiving notice of the breach from the other Party (unless the breach cannot be cured within thirty days, in which event the cure period shall be extended so long as the Party commences the cure within the 30-day period and thereafter diligently pursues the cure to completion), the breaching Party shall be in default and the non-breaching Party may terminate this Agreement, in addition to all other remedies available at law or in equity.

## **ARTICLE 9. GENERAL PROVISIONS**

9.1 Construction. The Parties acknowledge that each Party has been advised to have this Agreement reviewed by counsel, and agree that each Party and its counsel (and/or such other business and financial advisers as each Party desires) have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

9.2 Entire Agreement. This Agreement contains the entire contract of the Parties with respect to its subject matter, and supersedes all prior negotiations, understandings, or contracts. This Agreement may only be modified by a writing signed by both parties.

9.3 Severability. The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

9.4 Exhibits. All Exhibits expressly referenced in this Agreement are incorporated into and made part of this Agreement by reference. In the event of any material discrepancy between the other express provisions of this Agreement and the provisions of any Exhibit, the other provisions of this Agreement shall prevail.

9.5 Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement, in their entirety, by this reference.

9.6 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers under this Agreement at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

9.7 No Third Party Beneficiaries. The performance of the Parties' respective obligations under this Agreement is not intended to benefit any person other than City and Owner, except as may be expressly provided otherwise in this Agreement. No person not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as otherwise expressly provided in this Agreement.

9.8 Notices, Demands and Communications Between the Parties. Notices, demands and communications between City and Owner shall be deemed sufficiently given if (i) delivered personally, (ii) dispatched by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally-recognized reputable overnight delivery service to the principal offices of City and Owner as set forth below (or to such other address as a Party may from time to time designate by notice in accordance with this Section), and shall be deemed received upon delivery or refusal of delivery, if delivered personally, within 3 business days after deposit of same in the United States mail, if mailed, or one business day after deposit of same with a nationally recognized reputable overnight delivery service if sent by such a delivery service.

To Owner                      DVQ Revocable Trust  
565 W. Lambert Road, Suite F  
Bream CA 92821

With a copy to:              Rutan & Tucker, LLP 18575 Jamboree Road, 9<sup>th</sup> Floor Irvine, CA  
92612  
Attn: Alan Fenstermacher

To City: City of Brea  
1 Civic Center Circle  
Brea, CA 92821  
Attn: City Manager

With a copy to: Richards, Watson & Gershon  
1 Civic Center Circle  
P.O. Box 1059  
Brea, CA 92822-1059  
Attn: Brea City Attorney

9.9 Conflicts of Interest; Prohibited Interests. Owner warrants and maintains as of the Effective Date of this Agreement that it has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Owner. If any information regarding an officer or employee of City having an interest in this transaction or in the business of Owner as of the Effective Date comes to the knowledge of Owner at any time during the Term of this Agreement, Owner shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited “conflict of interest” under applicable laws. If City subsequently is provided information that Owner had knowledge but failed to disclose knowledge of any such interest, and Owner fails to acknowledge such interest within 14 days of notification by City, Owner’s failure shall constitute a breach of this Agreement.

9.10 Warranty Against Payment of Consideration for Agreement. Owner warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as attorneys.

9.11 Release of City Officials. No official, agent, employee, or attorney of City shall be personally liable to Owner, or any successor in interest of Owner, in the event of any default or breach by City or for any amount that may become due to Owner or its successors, or on any obligations under the terms of this Agreement. Owner waives and releases any claim it may have personally against the members, officials, agents, employees, consultants, or attorneys of City with respect to any default or breach by City or for any amount that may become due to Owner or its successors, or on any obligations under the terms of this Agreement. Owner makes such release with full knowledge of Civil Code Section 1542, and waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. California Civil Code Section 1542 provides as follows:

“A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

9.12 City Not Liable For Damages. It is acknowledged by the Parties that City would not have entered into this Agreement if it could be held liable in damages under or with respect to this Agreement. Consequently, and except for the payment of attorneys’ fees in accordance with this Agreement, City shall not be liable in damages to Owner, or to any assignee, transferee,

or any other person, and Owner covenants on behalf of itself and its successors in interest not to sue for or claim any damages: (i) for any breach of this Agreement; (ii) for the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; (iii) arising out of or connected with any dispute, controversy, or issue regarding the application or interpretation or effect of the provisions of this Agreement; or (iv) for any injury to or interference with the rights of Owner, allegedly or actually arising out of, or incurred in connection with, the parties entering this Agreement, or their exercise of any rights under this Agreement.

9.13 Venue. In the event of any litigation hereunder, all such actions shall be instituted in a court of competent jurisdiction located in the County of Orange, State of California.

9.14 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

9.15 No Joint Venture. Nothing contained herein shall be construed to render City in any way or for any purpose a partner, joint venture, or associated in any relationship with Owner, Costco, or any other person or entity; nor shall this Agreement be construed to authorize either Party to act as agent for the other.

9.16 Records. The City or any representative or designee thereof may at any time during normal business hours, upon reasonable prior notice, examine the books and records of Owner or any officer, employee, agent, contractor, affiliate, related person, assignee or franchisee, to the extent that such books and records relate, directly or indirectly, to the determination of Sales and Use Taxes generated from the Property. Owner shall keep the originals or true and correct copies, at Owner's principal place of business; provided that if such location is not located in Orange County, California, then Owner shall keep additional copies of such records in a location reasonably approved by City.

9.17 Waiver. The waiver by City or Owner of any breach by the other Party of any provision shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision. Either Party's acceptance of any performance by the other Party after the due date of such performance shall not be deemed to be a waiver by either Party of any preceding breach by the other Party of any provision of this Agreement, regardless of such Party's knowledge of such preceding breach at the time of acceptance of such performance.

9.18 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9.19 Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

**CITY:**

CITY OF BREA, a California municipal corporation

By: \_\_\_\_\_  
Blair Stewart  
Mayor

**OWNER:**

DVQ REVOCABLE TRUST

By: \_\_\_\_\_  
Dwight Manley  
Trustee

**ATTEST:**

\_\_\_\_\_  
Victoria Popescu  
City Clerk

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Terence R. Boga  
City Attorney

DRAFT

## EXHIBIT A

### Property Legal Description

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A: APN: 320-221-25

PARCEL 1 OF PARCEL MAP NO. 82-1112, IN THE CITY OF BREA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 176, PAGES 22 AND 23 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE SUB-SURFACE LYING BELOW A PLANE PARALLEL TO AND 100 FEET MEASURED VERTICALLY DOWNWARD BELOW THE SURFACE OF THAT PORTION THEREOF INCLUDED WITHIN LOT 4 OF TRACT NO. 10129, AS SHOWN ON A MAP RECORDED IN BOOK 422, PAGES 8 THROUGH 12, INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY.

ALSO EXCEPTING FROM THOSE PORTIONS INCLUDED WITHIN LOTS 2 AND 3 OF SAID TRACT NO. 10129, ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, MINERALS AND WATER, IN, UNDER OR THAT MAY BE PRODUCED FROM SAID REAL PROPERTY, WITH THE FREE, PERPETUAL AND EXCLUSIVE RIGHT TO EXPLORE, PROSPECT FOR, DRILL FOR, PRODUCE, TAKE AND REMOVE THE SAME FROM ONLY THAT PORTION OF SAID REAL PROPERTY WHICH UNDERLIES A PLANE PARALLEL TO AND 100 FEET BELOW THE SURFACE THEREOF, WHICH PORTION IS HEREINAFTER REFERRED TO AS "SUBSURFACE LAND", AS RESERVED BY UNION OIL COMPANY OF CALIFORNIA, A CORPORATION, IN DEED RECORDED FEBRUARY 20, 1964 AS INSTRUMENT NO. 16522, IN BOOK 6932, PAGE 548 OF OFFICIAL RECORDS, AND OTHER DEEDS OF RECORD.

NOTE: ALL RIGHTS OF SURFACE ENTRY AND USE WERE QUITCLAIMED IN A DEED RECORDED JULY 27, 1978 AS INSTRUMENT NO. 33899, IN BOOK 12774, PAGE 1424 OF OFFICIAL RECORDS.

PARCEL B: APN: 320-221-24

LOT 1 OF TRACT NO. 10129, IN THE CITY OF BREA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 422, PAGES 8 THROUGH 12, INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, MINERALS AND WATER, IN, UNDER OR THAT MAY BE PRODUCED FROM SAID REAL PROPERTY, WITH THE FREE, PERPETUAL AND EXCLUSIVE RIGHT TO EXPLORE, PROSPECT FOR, DRILL FOR, PRODUCE, TAKE AND REMOVE THE SAME FROM ONLY THAT PORTION OF SAID REAL PROPERTY WHICH UNDERLIES A PLANE PARALLEL TO AND 100 FEET BELOW THE SURFACE THEREOF, WHICH PORTION IS HEREINAFTER REFERRED TO AS "SUBSURFACE LAND", AS RESERVED BY UNION OIL COMPANY OF CALIFORNIA, A CORPORATION, IN DEED RECORDED FEBRUARY 20, 1964 AS INSTRUMENT NO. 16522, IN BOOK 6932, PAGE 548 OF OFFICIAL RECORDS, AND OTHER DEEDS OF RECORD.

NOTE: THE RIGHT OF SURFACE ENTRY WAS RELINQUISHED BY AN INSTRUMENT RECORDED JANUARY 11, 1978 AS INSTRUMENT NO. 14644, IN BOOK 12526, PAGE 1999 OF OFFICIAL RECORDS.